



SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2020-0017]

Social Security Ruling 22-1p

Titles II and XVI: Fraud and Similar Fault Redeterminations Under Sections 205(u) and 1631(e)(7) of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are providing notice of SSR 22-1p. This ruling rescinds and replaces SSR 16-1p and explains the revised process we will use to redetermine an individual's entitlement to benefits or eligibility for payments under titles II or XVI of the Social Security Act (Act) when there is reason to believe that fraud or similar fault was involved in that individual's original application for benefits or payments. We are revising the evidentiary standard for fraud and similar fault from a "preponderance of the evidence" to "reason to believe" to align more closely with the standard provided in the Act. We are also providing a new procedure at the hearings level of our administrative review process. The procedure provides that, before we disregard evidence under the Act at the hearings level of our administrative review process, we will consider the individual's objection to the disregarding of that evidence. We expect that these revised procedures will allow us to implement relevant sections of the Act in a manner consistent with the decisions of the Courts of Appeals that have considered legal challenges to the procedures outlined in SSR 16-1p.

DATES: We will apply this notice on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Mary Quatroche, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-966-4794. For information on eligibility or filing for benefits, call our national toll-free number 1-800-772-1213 or visit our Internet site, Social Security online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are publishing it in accordance with 20 CFR 402.35(b)(1). SSRs do not have the same force and effect as statutes or regulations, but they are binding on all components of the Social Security Administration. 20 CFR 402.35(b)(1).

We use SSRs to make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made in our administrative review process, Federal court decisions, decisions of our Commissioner, opinions from our Office of the General Counsel, or other interpretations of law and regulations.

This SSR will remain in effect until we publish a notice in the Federal Register that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security – Disability Insurance; 96.002, Social Security – Retirement Insurance; 96.004, Social Security – Survivors Insurance; 96.006 – Supplementary Security Income.)

The Acting Commissioner of Social Security, Kilolo Kijakazi, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for the Social Security Administration, for purposes of publication in the Federal Register.

Faye I. Lipsky,
Federal Register Liaison,
Office of Legislation and Congressional Affairs,
Social Security Administration.

POLICY INTERPRETATION RULING

SSR 22-1p: Titles II and XVI: Fraud and Similar Fault Redeterminations Under Sections 205(u) and 1631(e)(7) of the Social Security Act

This Social Security Ruling (SSR) rescinds and replaces SSR 16-1p: “Titles II and XVI: Fraud and Similar Fault Redeterminations Under Sections 205(u) and 1631(e)(7) of the Social Security Act.”

PURPOSE: To explain the process we use to redetermine an individual’s entitlement to benefits or eligibility for payments under titles II or XVI of the Social Security Act (Act)

when there is reason to believe that fraud or similar fault was involved in that individual's original application for benefits or payments.¹

CITATIONS (AUTHORITY): Sections 205(u) and 1631(e)(7) of the Social Security Act, 42 U.S.C. 405(u) and 1383(e)(7), as amended; 20 CFR 404.704, 404.708, 404.1512, 404.1520, 416.912, 416.920, 416.924, and 422.130.

DATES: We will apply this notice on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

INTRODUCTION:

The Social Security Independence and Program Improvements Act of 1994, Public Law 103-296, amended the Act to add provisions addressing fraud or similar fault. These amendments to sections 205 and 1631 of the Act require us to immediately redetermine an individual's entitlement to monthly insurance benefits under title II or eligibility for payments under title XVI if there is reason to believe that fraud or similar fault was involved in the individual's application for such benefits or payments.

The Act further provides that, when we redetermine entitlement or eligibility, or when we make an initial determination of entitlement or eligibility, "we shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence."² If, after redetermining entitlement to benefits or eligibility

¹ Fraud and similar fault redeterminations under sections 205(u) and 1631(e)(7) of the Act are distinct from reopenings as described in 20 CFR 404.987 – 404.996 and 20 CFR 416.1487 – 416.1494. Fraud and similar fault redeterminations are also distinct from redeterminations of Supplemental Security Income eligibility under title XVI of the Act as described in 20 CFR 416.204 and 416.987.

² See 42 U.S.C. §§ 405(u)(1)(B), 1383(e)(7)(A)(ii)

for payments, we determine that the evidence does not support entitlement to benefits or eligibility for payments, we may terminate such entitlement or eligibility and may treat benefits or payments paid based on such evidence as overpayments.

This ruling explains the standards we use when we determine whether there is reason to believe that fraud or similar fault was involved in providing evidence in connection with an application for benefits or payments. The ruling applies to all applications for benefits under title II and payments under title XVI of the Act; e.g., claims for old-age and survivors benefits and disability benefits under title II of the Act, and applications for Supplemental Security Income payments for the aged, blind, and disabled under title XVI of the Act.

This ruling also describes the process we use when we redetermine an individual's entitlement to benefits or eligibility for payments when there is reason to believe that fraud or similar fault was involved in that individual's original application for benefits or payments.

This ruling does not replace or limit other appropriate standards and criteria for development and evaluation of claims in accordance with our rules. There may be instances in which we will not disregard evidence under the statutory provisions discussed in this ruling, but nevertheless, factors may exist that justify considering the evidence in question less persuasive or probative than other evidence.

POLICY INTERPRETATION:

A. General

1. Sections 205(u) and 1631(e)(7) of the Act require us to immediately redetermine an individual's entitlement to monthly insurance benefits under title II or eligibility for

payments under title XVI if there is reason to believe that fraud or similar fault was involved in the individual's application for benefits or payments.

2. The Act requires us to redetermine an individual's entitlement or eligibility immediately, unless a United States Attorney or other Department of Justice prosecutor, or equivalent State prosecutor, with jurisdiction over potential or actual-related criminal cases, certifies, in writing, that there is a substantial risk that our action with regard to beneficiaries or recipients in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

3. We may discover suspected fraud or similar fault related to a claim for benefits or payments or in the provision of the evidence in a variety of ways. Most often, we learn about fraud from our Office of the Inspector General (OIG). OIG is responsible for investigating fraud within our programs and must notify us under section 1129(l) of the Act when it has reason to believe that fraud was involved in an individual's claim for benefits or payments. We refer to this notification as a section 1129(l) referral. We may also learn about fraud from a Federal or State prosecutor during the course of a criminal investigation or prosecution. With regard to similar fault, as we administer our programs, we may uncover information that provides a reason to believe similar fault was involved in the provision of evidence in an individual's claim for benefits or payments.

4. We may find there is reason to believe fraud or similar fault was involved in a claim for benefits or payments, or in providing evidence, based on the actions of any individual whose actions affect an application for benefits or payments, or the evidence provided in support of it, even when such an individual has no direct relationship to the affected claimant, beneficiary, or recipient or acts without the affected claimant's, beneficiary's,

or recipient's knowledge or participation. These individuals may include, but are not limited to, claimants, beneficiaries, auxiliaries, recipients, spouses, representatives, medical sources, translators, interpreters, and representative payees. For example, we may have reason to believe a medical source or a representative provided false information to support a claim without the knowledge or participation of the beneficiary or the recipient.

5. When we redetermine an individual's entitlement to benefits or eligibility for payments under sections 205(u) or 1631(e)(7) of the Act, we must disregard evidence if there is reason to believe that fraud or similar fault was involved in providing that evidence.

6. Except for evidence we are required to disregard under the Act, we will consider all other evidence that relates to the individual's entitlement or eligibility during the period at issue in the redetermination, in accordance with our rules. Even if we disregard evidence, we will evaluate the remaining evidence of record and determine whether that evidence supports a finding of entitlement to benefits or eligibility for payments. This includes evidence included in the record at the time of the original favorable determination or decision, along with evidence provided during the redetermination process. When requested, we will help individuals obtain evidence relevant to the redetermination.

7. If, after redetermining an individual's entitlement to monthly insurance benefits under title II or eligibility for payments under title XVI, we determine that the evidence does not support such entitlement to benefits or eligibility for payments, we may terminate such entitlement or eligibility and may treat benefits paid or payments made based on such evidence as overpayments.

8. If an individual disagrees with our finding that the evidence does not support his or her entitlement or eligibility at the time of the original favorable determination or decision, that individual may appeal our determination or decision. Together with such an appeal, an individual may object to our finding to disregard evidence under the Act. We will consider any appeal in accordance with our rules for administrative review.

9. If the individual believes he or she was disabled at any point after the period at issue in the redetermination, he or she may file a new application while appealing our determination or decision.³

10. If we assess an overpayment, we will apply the provisions of 20 CFR Part 404, Subpart F (20 CFR 404.501 et seq.) and 20 CFR Part 416, Subpart E (20 CFR 416.501 et seq.). We will consider a request to waive the overpayment in accordance with our rules.

B. Definitions

1. *Fraud.* Fraud exists when a person, with the intent to defraud, either makes or causes to be made, a false statement or misrepresentation of a material fact for use in determining rights under the Act; or conceals or fails to disclose a material fact for use in determining rights under the Act.

³ SSR 11-1p: Titles II and XVI: Procedures for Handling Requests to File Subsequent Applications for Disability Benefits does not apply in the context of fraud or similar fault redeterminations.

2. *Similar Fault*. Similar fault is involved with respect to a determination if: “an incorrect or incomplete statement that is material to the determination is knowingly made, or information that is material to the determination is knowingly concealed.”⁴

3. *Material*. Material describes a statement or information, or an omission from a statement or information that could influence us in determining entitlement to benefits under title II or eligibility for payments under title XVI of the Act.

4. *Knowingly*. Knowingly describes a person’s awareness or understanding regarding the correctness or completeness of the information he or she provides us, or the materiality of the information he or she conceals from us.

5. *Reason to Believe*. Reason to believe means reasonable grounds to suspect that fraud or similar fault was involved in the application or in the provision of evidence. The reason to believe standard requires more than mere suspicion, speculation, or a hunch, but it does not require a preponderance of evidence.

C. How We Redetermine an Individual’s Entitlement to Benefits or Eligibility for Payments under Sections 205(u) and 1631(e)(7) of the Act

1. Under sections 205(u) and 1631(e)(7) of the Act, we will immediately redetermine an individual’s entitlement to benefits or eligibility for payments when there is reason to believe that fraud or similar fault was involved in an individual’s application for benefits or payments, including the providing of evidence.

⁴ See 42 U.S.C. §§ 405(u)(2), 1383(e)(7)(B).

2. We will disregard any evidence if we find there is reason to believe that fraud or similar fault was involved in the providing of such evidence. We will consider all evidence in the case record before determining whether specific evidence must be disregarded. In determining if there is reason to believe fraud or similar fault was involved, adjudicators may make reasonable inferences based on the totality of the circumstances such as facts or case characteristics common to patterns of known or suspected fraudulent activity. For us to disregard evidence it is not necessary that the affected beneficiary or recipient had knowledge of or participated in the fraud or similar fault. We will fully document the record with the description of the disregarded evidence and the reasons for disregarding the evidence.

a. We will disregard evidence supplied, prepared, or signed by a medical source or nonmedical source when there is reason to believe that the source knowingly (1) provided incorrect or incomplete evidence material to the determination or decision or (2) concealed or failed to disclose evidence material to the determination or decision, even if it includes a report prepared or signed by another source.

b. In certain circumstances, we may disregard evidence provided by someone who has not committed fraud or similar fault, but whose evidence relies on other evidence involving fraud or similar fault. For example, we may disregard parts of a medical source's opinion, which relies on evidence that we disregarded from another medical source. Depending on the extent to which the medical source relied on the disregarded evidence, we may disregard some or all of the medical source's opinion.

c. Before we disregard evidence pursuant to sections 205(u)(1)(B) and 1631(e)(7)(A)(ii) of the Act at the hearings level of our administrative review process, we will consider the

individual's objection to the disregarding of that evidence. After considering any objections, our adjudicators will decide whether there is reason to believe that fraud or similar fault was involved in providing evidence in the individual's case.

d. If we do not find there is reason to believe evidence provided by a source involved fraud or similar fault, we will consider the evidence in accordance with our rules, such as our rules regarding evaluating symptoms and medical evidence. We will adhere to existing due process and confidentiality requirements during the process of resolving fraud or similar fault issues.

3. We will consider the claim only through the date of the final determination or decision on the beneficiary's or recipient's application for benefits or payments (i.e., the date of the original favorable determination or decision).

4. We will consider evidence relevant to the issues we decide during a redetermination. For example, we will consider evidence that postdates the original date of the favorable determination or decision if that evidence relates to the period at issue in the redetermination. We will not develop evidence about new medical conditions or impairments arising after the date of the original favorable determination or decision.

5. Generally, a finding that there is reason to believe fraud or similar fault was involved in providing evidence does not constitute complete adjudicative action on the redetermination. Even if we disregard evidence, we will evaluate the remaining evidence of record and determine whether that evidence supports a finding of entitlement to benefits or eligibility for payments.

D. Appeal Rights

1. Our regulations contain examples of administrative actions that are not initial determinations.⁵ Our initiation of a redetermination under sections 205(u) and 1631(e)(7) of the Act is not listed as an example in those regulations. However, the initiation of a redetermination is similar to the administrative action of starting or discontinuing a continuing disability review, which is listed as an example in the regulations of an administrative action that is not an initial determination.⁶ Therefore, we interpret our regulations to mean that our initiation of a redetermination under sections 205(u) and 1631(e)(7) of the Act is not an initial determination that is subject to administrative or judicial review.

2. After a redetermination, an individual who is dissatisfied with our determination or decision may request an appeal of our determination or decision. In conjunction with such an appeal, an individual may object to our finding to disregard evidence under the Act. We will consider any appeal in accordance with our rules for administrative review.

3. An individual may appeal any overpayments we assess, or request waiver of the overpayment. We will consider any appeal of the assessment of an overpayment or a request for waiver of our overpayment in accordance with our rules.⁷

CROSS-REFERENCES: SSR 85-23: Title XVI: Reopening Supplemental Security Income Determinations at Any Time for “Similar Fault”; SSR 22-2p: Titles II and XVI: Evaluation of Claims Involving the Issue of Similar Fault in the Providing of Evidence.

⁵ 20 CFR 404.903 and 416.1403.

⁶ 20 CFR 404.903(z) and 416.1403(a)(24).

⁷ 20 CFR Part 404.501 – 404.545 and 20 CFR 416.501 – 416.590.

